

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESUS NAVARRO-MONTES (01),

Defendant.

CASE NO. 09cr577-MMA-1

**ORDER RE: DEFENDANT'S
MOTION TO SUPPRESS
STATEMENTS**

[Doc. No. 100]

On October 28, 2010, Defendant Jesus Navarro-Montes ("Navarro-Montes") was arraigned under a third superseding indictment and charged as follows: (1) on January 19, 2008, conspiracy to distribute 100 kilos or more of marijuana in violation of 21 U.S.C. §§ 841(a)(1) and 846; (2) on September 23, 2007, possession with intent to distribute 445.32 kilos of marijuana in violation of 21 U.S.C. § 841(a)(1); and (3) on January 19, 2008, killing, with malice aforethought, United States Border Patrol Agent L. Aguilar in Imperial Sand Dunes Recreation Area by striking him with a Hummer vehicle in violation of 18 U.S.C. § 1114.

The matter is currently before the Court on Navarro-Montes' Motion to Suppress Statements. On December 6, 2010, the Court held an initial hearing on the motion. On January 11, 2011, the Court held an evidentiary hearing to consider the voluntariness of certain statements made by

1 Navarro-Montes to Mexican authorities. Having considered the submissions of the parties, oral
2 arguments of counsel, and testimony of the witnesses, the Court denies the motion to suppress these
3 statements.

4 **DISCUSSION**

5 1. *Summary*

6 Navarro-Montes moves to suppress statements he made to Mexican authorities on three
7 separate occasions in January 2008 and February 2009. He argues that these statements are
8 inadmissible either because he was not given his *Miranda* warnings, or he made the statements
9 involuntarily, or both. Navarro-Montes, a non-citizen, claims entitlement to Fifth Amendment rights
10 under the United States Constitution because the United States and Mexico were involved in a “joint
11 venture” to investigate and detain him in relation to this case, thereby extending constitutional
12 protection to him.

13 In addition to the oral arguments of counsel and their written submissions, the parties had the
14 opportunity during an evidentiary hearing to present witness testimony and exhibits in support of
15 their respective positions concerning the voluntariness of Navarro-Montes’ statements. The
16 government called four witnesses and submitted a number of exhibits. Navarro-Montes did not call
17 any witnesses, however, he cross-examined the government’s witnesses, submitted exhibits, and
18 testified on his own behalf. A summary of the pertinent portions of each witness’ testimony is
19 summarized below.

20 a) Mario Alberto Diaz-Alcantar

21 In January 2008, Mario Alberto Diaz-Alcantar held the position of Investigative Prosecutor
22 II with the State Attorney General’s Office, State of Sonora, Mexico. Diaz-Alcantar testified on
23 direct examination that on January 22, 2008, he was on duty and presented with an Information by
24 Sonoran police charging Navarro-Montes with bribery. The police brought Navarro-Montes to
25 Diaz-Alcantar’s office, at which time he provided Navarro-Montes with the opportunity to make a
26 ministerial declaration, a transcribed and witnessed oral declaration. A public defender was
27 assigned to represent Navarro-Montes and was present during his declaration to the prosecutor.
28 After giving his statement, Navarro-Montes and his attorney read the transcription to make sure it

1 accurately reflected his declaration and then signed it.

2 Diaz-Alcantar testified that Navarro-Montes was not beaten or otherwise abused or
3 threatened in his office, nor did Navarro-Montes allege that he had been abused or threatened.
4 Navarro-Montes was very calm. The public defender assigned to represent Navarro-Montes never
5 mentioned that Navarro-Montes had complained of beatings or abuse, even though there were
6 opportunities to memorialize such allegations. After his declaration, two doctors examined Navarro-
7 Montes and found no evidence of injury. Diaz-Alcantar stated that he decided not to pursue the state
8 bribery charges due to insufficient evidence, and that he was not aware at the time that a warrant had
9 been issued for Navarro-Montes' arrest for federal crimes.

10 On cross examination, Diaz-Alcantar testified that Navarro-Montes was provided notice of
11 his rights under Mexican law, including the right to declare or decline to declare the facts of which
12 he was accused. According to Diaz-Alcantar, Navarro-Montes was not provided notice of any rights
13 under U.S. law because any statement elicited was pursuant to questioning regarding the Mexican
14 state crime of bribery. Subsequent to being advised of the bribery allegations, Navarro-Montes was
15 given several minutes to confer with his public defender. Navarro-Montes informed Diaz-Alcantar
16 that he had bribed the police not to detain him due to the problems he was having with U.S. officials.
17 Diaz-Alcantar testified that Navarro-Montes' declaration was almost entirely related to the events in
18 the U.S. because they were the antecedent events to the bribery allegations. Diaz-Alcantar reiterated
19 that a medical doctor examined Navarro-Montes after he was detained, although Diaz-Alcantar did
20 not examine Navarro-Montes personally. According to Diaz-Alcantar, after Navarro-Montes left his
21 office on January 22, 2008, he did not have any contact with him again.

22 b) Jesus Omar Castillo-Ramos

23 On January 22, 2008, Jesus Omar Castillo-Ramos, a public defender, represented Navarro-
24 Montes during his ministerial declaration before the prosecutor regarding the state bribery charges.
25 Castillo-Ramos testified that he reviewed the Information charging Navarro-Montes prior to sitting in
26 on the declaration, and had the opportunity to speak with Navarro-Montes and advise him regarding
27 his right to decline making a declaration. Castillo-Ramos stated that he was present during Navarro-
28 Montes' declaration, and reviewed the transcript of the declaration and found it to be accurate.

1 Castle-Ramos recalled observing no indications that Navarro-Montes had been physically assaulted,
2 and stated that if he had observed any signs of assault he would made a statement to that effect at the
3 close of the declaration.

4 On cross examination, Castle-Ramos admitted that he remembered only a little of what
5 happened on January 22, 2008. On rebuttal, Castle-Ramos testified that Navarro-Montes never told
6 him that he had been beaten or threatened by anyone prior to making his declaration.

7 c) Cesar Manuel Adame Munoz

8 On January 23, 2008, Cesar Manuel Adame Munoz was the federal prosecutor on duty in
9 Mexicali. He testified that he received notice on January 22, 2008 that there was an individual who
10 had been arrested and who had stated he killed a border patrol agent. Munoz testified that at the
11 time, their office had an active investigation concerning the death of a border patrol agent with the
12 last name of Aguilar. According to Munoz, there was also a federal arrest warrant out for Navarro-
13 Montes for human trafficking (unrelated to the death of Agent Aguilar).

14 Munoz testified that he was present when Navarro-Montes arrived at the federal prosecutor's
15 office in Mexicali, and Navarro-Montes was provided an attorney prior to making a declaration.
16 According to Munoz, Navarro-Montes was advised of his federal Mexican rights, including the right
17 to remain silent. A secretary recorded the declaration, which Navarro-Montes and his attorney
18 reviewed and found to be accurate. Munoz testified that during his declaration, Navarro-Montes
19 was calm while describing the events surrounding Agent Aguilar's death. At the end of the
20 declaration, Navarro-Montes' attorney argued that a confession alone was insufficient to convict
21 Navarro-Montes of any crime. After the declaration, Navarro-Montes was taken to the Mexicali
22 state jail and booked on human trafficking charges. Munoz stated that Navarro-Montes never told
23 him he had been beaten or threatened in any way by Mexican authorities, and Navarro-Montes
24 appeared unharmed.

25 On cross examination, Munoz testified that he acted as a liaison regarding border crimes
26 between the Mexican federal prosecutor's office and the authorities in the United States. As such,
27 Munoz stated that he received regular communications from the United States. Munoz testified that
28 after Navarro-Montes' declaration, Munoz met with a United States special agent, and Munoz's boss

1 subsequently gave the agent permission to interview Navarro-Montes. Munoz also stated that prior
 2 to Navarro-Montes' declaration, Munoz, his boss, and a secretary were present for a pre-declaration
 3 interview with Navarro-Montes, during which he was not represented by an attorney, but spoke
 4 voluntarily when questioned.

5 d) Jose Gustavo Onofre Pozos

6 In February 2009, Jose Gustavo Onofre Pozos was a federal agent of investigations stationed
 7 in Mexico City. Pozos testified that his job duties included the apprehension of fugitives and in that
 8 capacity, he served as part of a team of Mexican federal agents who apprehended Navarro-Montes
 9 on February 11, 2009 in Pantla, Mexico. Pozos stated that the team of agents, assisted by local
 10 police, surrounded Navarro-Montes' location at 6:00 a.m. The agents were informed that Navarro-
 11 Montes might be armed. Based on a photograph of Navarro-Montes provided by the U.S. Federal
 12 Bureau of Investigation, Pozos recognized Navarro-Montes and he and the other agents took
 13 Navarro-Montes into custody.

14 Once the agents detained Navarro-Montes, he remained in the custody and presence of
 15 Pozos. Pozos testified that he rode in the back of the official vehicle with Navarro-Montes, and read
 16 the apprehension order to him as required. Navarro-Montes then proceeded to tell Pozos that he had
 17 run over the border patrol agent, but not intentionally. According to Pozos, Navarro-Montes was
 18 never beaten or otherwise physically abused, and exhibited a calm demeanor during transport.

19 On cross examination, Pozos testified that his commander advised him prior to the
 20 apprehension that Navarro-Montes was considered very dangerous. Pozos further stated that the
 21 apprehension order was for the Mexican drug trafficking charges, issued by a judge in Mexico, and
 22 that he was surprised when Navarro-Montes started to tell him about the death of the border patrol
 23 agent.

24 Pozos also testified that agents apprehended Navarro-Montes on the street, approximately 15
 25 to 20 meters from a residence, in an alley. Navarro-Montes was alone, and agents never entered the
 26 residence.

27 e) Jesus Albino Navarro-Montes

28 Navarro-Montes testified that on January 22, 2008, agents arrested him in Pueblo Yaqui,

1 Mexico, placed him in the back of an unmarked vehicle, drove him to fields outside of the town, and
 2 threatened him and hit him while telling him to take responsibility for the death of the border patrol
 3 agent. According to Navarro-Montes, the agents hit him in his side and his back after putting a trash
 4 bag over his head. The agents eventually transferred him to a patrol car and took him to the
 5 prosecutor's office. Navarro-Montes testified that he signed the statement after making his
 6 declaration because the agents threatened him, saying that they knew where his family lived. The
 7 agents also told him that if he signed the statement they would not take him to the United States,
 8 where he would get the death penalty.

9 Navarro-Montes testified that on the next day agents brought him in a patrol car to Mexicali.
 10 Once he arrived, agents once again threatened his family, particularly his wife and child who live in
 11 Mexicali, and therefore he signed another statement. Navarro-Montes stated that he was released
 12 from custody in June 2008.

13 Navarro-Montes stated that on February 11, 2009 he was asleep when agents arrested him in
 14 his house, wearing only boxer shorts. Navarro-Montes testified that Mexican agents threw him from
 15 his bed to the ground, handcuffed him and took him out of the house. Once they exited the house
 16 into an alley, U.S. agents were waiting for him. According to Navarro-Montes, he made no
 17 statement to any of the officers.

18 On cross examination, Navarro-Montes testified that upon his arrival on January 22, 2008 at
 19 the prosecutor's office he informed his attorney and the prosecutor that he had been beaten prior to
 20 his arrival. He provided no information to agents and was forced to sign the written statements
 21 because they threatened him with the death penalty in the U.S. and threatened his family.

22 2. *Relevant Law*

23 The Ninth Circuit has stated that "we assume without deciding that the constitutional
 24 protection against involuntary confessions applies to confessions coerced by foreign police." *United*
25 States v. Wolf, 813 F.2d 970, 973 (9th Cir. 1987). Thus, if a court finds that a defendant made an
 26 inculpatory statement to foreign officials of his own free will, without duress or coercion, the
 27 statement may be used against him in later proceedings. Furthermore, the Ninth Circuit has held
 28 that foreign officials interrogating foreign nationals do not have to give *Miranda* warnings prior to

1 obtaining voluntary confessions on foreign soil in order for such confessions to be admissible in a
 2 court in the United States, reasoning that the exclusionary rules have little if any deterrent effect on
 3 foreign police:

4 *Miranda* was intended as a deterrent to unlawful police interrogations. When
 5 the interrogation is by the authorities of a foreign jurisdiction, the exclusionary
 6 rule has little or no effect upon the conduct of foreign police. Therefore, so long
 7 as the trustworthiness of the confession satisfies legal standards, the fact that the
 defendant was not given *Miranda* warnings before questioning by foreign police
 will not, by itself, render his confession inadmissible.

8 *United States v. Chavarria*, 443 F.2d 904, 905 (9th Cir. 1971).

9 Courts have found that two exceptions generally apply to the admissibility of voluntary
 10 statements made to foreign officials on foreign soil in the absence of *Miranda* warnings. *United*
 11 *States v. Yousef*, 327 F.3d 56, 145-46 (2d Cir. 2003).

12 First, if the United States engaged in a “joint venture” with the foreign officials, “statements
 13 elicited during overseas interrogation by foreign police in the absence of *Miranda* warnings must be
 14 suppressed.” *Id.* at 145; *United States v. Heller*, 625 F.2d 594, 599 (5th Cir. 1980) (“if American
 15 officials participated in the foreign . . . interrogation, or if the foreign authorities were acting as
 16 agents for their American counterparts, the exclusionary rule should be invoked”); *United States v.*
 17 *Hensel*, 509 F. Supp. 1364, 1375 (D. Me. 1981). A joint venture occurs where the United States
 18 actively participated -- either directly or indirectly -- in the questioning of the defendant. Even if
 19 United States law enforcement did not directly question a defendant, courts suggest that a joint
 20 venture nonetheless exists if the American law enforcement agents used the foreign officials to carry
 21 out such questioning in order to circumvent *Miranda*’s mandates. *See Yousef*, 327 F.3d at 145-46;
 22 *United States. v. Abu Ali*, 395 F.Supp.2d 338, 381 (E.D. Va. 2005). With respect to extradition
 23 procedures, at least one circuit has held, in pertinent part:

24 [E]vidence that the United States may have solicited the assistance of a foreign
 25 government in the arrest of a fugitive within its borders is insufficient as a matter of
 26 law to constitute United States participation under the joint venture doctrine . . . United
 States law enforcement officers are not required to “monitor the conduct” of foreign
 officials who execute a request for extradition or expulsion.

27 *Yousef*, 327 F.3d at 146 (quoting *United States v. Lira*, 515 F.2d 68, 71 (2d Cir. 1975)).

28 Second, even where a defendant voluntarily makes a statement, due process is violated where

1 “the foreign officers’ conduct is so egregious that it ‘shocks the conscience’ of the American court.”
 2 *United States v. Angulo-Hurtado*, 165 F.Supp.2d 1363, 1370 (N.D. Ga. 2001) (citing *United States*
 3 *v. Rosenthal*, 793 F.2d 1214, 1230-31 (11th Cir. 1986)); *see also Abu Ali*, 395 F.Supp.2d at 380.
 4 Any statements made as a result of such conduct are inadmissible in an American court. *United*
 5 *States v. Maturo*, 982 F.2d 57, 60-61 (2d Cir. 1992). Although not exhaustively defined, the types
 6 of circumstances that warrant the application of this exception generally involve the use of torturous
 7 interrogative methods. *See, e.g., United States v. Nagelberg*, 434 F.2d 585, 587 n. 1 (2d Cir. 1970).
 8 Navarro-Montes does not suggest that this exception pertains to the instant motion.

9 3. *Analysis*

10 The Court first must determine whether the government has proven by a preponderance of
 11 the evidence that Navarro-Montes voluntarily made the statements at issue. If the Court so finds, the
 12 statements will be admissible at trial unless the Court further concludes that the United States and
 13 Mexico were engaged in a joint venture, and Navarro-Montes was not informed of his rights under
 14 the U.S. constitution prior to making the statements.

15 a) *Voluntariness*

16 Navarro-Montes contends that his written and oral statements to Mexican authorities were
 17 the product of coercion and intimidation stemming from threats and physical abuse by the officers
 18 responsible for his detention. When “a confession challenged as involuntary is sought to be used
 19 against a criminal defendant at his trial . . . the prosecution must prove by at least a preponderance of
 20 the evidence that the confession was voluntary.” *Lego v. Twomey*, 404 U.S. 477, 489 (1972); *see*
 21 *also Colorado v. Connelly*, 479 U.S. 157, 168 (1986) (reaffirming *Lego*). To meet its burden, the
 22 government must demonstrate that such a statement was “the product of an essentially free and
 23 unconstrained choice.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973) (internal quotation
 24 marks omitted). If a defendant’s “will has been overborne and his capacity for self-determination
 25 critically impaired, the use of his confession offends due process.” *Id.* at 225-26.

26 The Court finds that the government has satisfied its burden of proving by a preponderance
 27 of the evidence that Navarro-Montes did not make the January 22, 2008, January 23, 2008, and
 28 February 11, 2009 statements as a result of coercion or undue influence. The testimony of the

1 government's witnesses at the evidentiary hearing uniformly corroborate that Navarro-Montes
2 suffered no coercive physical or psychological abuse while detained in January 2008 or February
3 2009, and was at no time, including during the custodial interviews on each occasion, threatened or
4 mistreated in any way. The witnesses provided consistent accounts of Navarro-Montes' demeanor
5 during questioning, stating that he never mentioned any abuse and was calm. None of the witnesses
6 recalled observing any physical signs of abuse. Navarro-Montes' public defender testified that if he
7 had been told of or observed any such abuse he would have made a statement to that effect at the
8 close of his client's ministerial declaration, thus memorializing it in writing. The integrity of these
9 procedures and the adequacy of the public defender's representation of Navarro-Montes were not
10 brought into question.

11 The other evidence also supports the credible testimony of the government's witnesses.
12 Forensic medical doctors assigned to the State Attorney General's Office examined Navarro-Montes
13 on the evening of January 22, 2008, and found him to be in good physical health with no evident
14 external injuries, ambulatory, with a normal gait. *See Gov't. Ex. 2 & 2A.* Photographs of Navarro-
15 Montes taken on February 11, 2009 immediately subsequent to his apprehension by Mexican agents
16 reveal no external injuries on his face or upper torso. *See Gov't. Ex. 8.* The federal public defender
17 assigned to represent Navarro-Montes on January 23, 2008 submitted a sworn affidavit on behalf of
18 his client, arguing for his immediate release. *See Gov't. Ex. 5 & 5A.* In the affidavit, Navarro-
19 Montes' attorney presented legal arguments to support the minimization of the evidentiary value of
20 his client's inculpatory statements to authorities, but included no facts to suggest that those
21 statements were the product of coercion or duress.

22 The only evidence before the Court of any abuse or threats to Navarro-Montes is his own
23 self-serving declaration submitted in support of his motion, and his testimony during the evidentiary
24 hearing. The Court acknowledges that Navarro-Montes' version of events remained consistent, even
25 upon cross examination. However, the clear and direct conflict between the testimony of the
26 Mexican authorities and that of Navarro-Montes requires the Court to make a credibility
27 determination. The weight of the evidence belies Navarro-Montes' allegations of threats and abuse,
28 which the Court found to be less credible than the corroborating testimony of the other witnesses

1 and documentary evidence. Navarro-Montes has a clear interest in the outcome of the hearing and,
 2 thus, had a motivation to slant his testimony so as to make it appear that his statements were not
 3 voluntary.

4 The Court concludes that Navarro-Montes' statements were the "product of an essentially
 5 free and unconstrained choice" and shall not be suppressed on grounds of involuntariness.
 6 *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973).

7 b) Joint Venture

8 Navarro-Montes argues that the statements in question should be suppressed on the
 9 alternative ground that Mexican authorities were required to provide *Miranda* warnings under the
 10 "joint venture" doctrine, but failed to do so. While there was ongoing cooperation in this case
 11 between U.S. and Mexican authorities, it is not sufficient to be considered a "joint venture."

12 First, the exchange of information between law enforcement agencies in the United States
 13 and Mexico is standard operating procedure on both sides of the border. Neither the existence of an
 14 extradition request, the fact that the F.B.I. provided Mexican agents with Navarro-Montes' location
 15 prior to apprehension, nor the involvement of an agent acting in the specific capacity as a liaison
 16 with U.S. investigators, supports his asserted entitlement to *Miranda* protection. Navarro-Montes
 17 ran afoul of Mexican state laws by attempting to bribe police, and was subject to detention pursuant
 18 to a warrant issued by a judge in Mexico for violation of Mexican federal laws, thus the United
 19 States and Mexico had separate and independent interests in detaining and questioning him.
 20 Ordinary requests for extradition are alone insufficient evidence of a joint venture, *Yousef, supra*,
 21 327 F.3d at 146, but particularly in a case such as this where the foreign national is the target of an
 22 active investigation by authorities in his country of origin for violating the laws of that country. The
 23 Information provided by Sonoran police and the federal arrest warrant issued by a judge in Mexico,
 24 belie Navarro-Montes' claim that he was apprehended and questioned only because he was
 25 suspected of committing a crime in the United States.

26 Furthermore, the evidence supports the government's assertion that U.S. officials were not
 27 present when Navarro-Montes made statements to Mexican authorities on January 22 and 23, 2008,
 28 and Mexican authorities did not act on behalf of U.S. agents when questioning him. "In the absence

1 of active participation by a United States official in the evidence-gathering event, a joint venture can
 2 only exist when foreign officials are rendered ‘agents’ of the United States government, or when the
 3 cooperation was designed to evade the constitutional requirements applicable to American
 4 investigators.” *United States v. Karake*, 443 F. Supp. 2d 8, 94 (D.D.C. 2006) (citations omitted).
 5 Whatever information sharing or cooperation might have occurred, there is nothing in the record to
 6 support a finding that the Mexican police and prosecutor’s office were rendered “agents” of the U.S.
 7 authorities, even under a broad view of the “joint venture” standard. Nor does the evidence suggest
 8 that U.S. authorities orchestrated Navarro-Montes’ ministerial declarations with Mexican authorities
 9 to avoid advising him of his rights. *Miranda* warnings were not required prior to questioning by
 10 Mexican authorities subsequent to an arrest by Mexican police for allegedly violating Mexican law.
 11 This conclusion notwithstanding, the Court notes that prior to each declaration Mexican officials
 12 advised Navarro-Montes of his rights under Mexican law, giving him substantially similar
 13 admonitions as one receives when read their rights under the U.S. Constitution. Navarro-Montes
 14 was informed that he had the right to an “adequate defense, either representing himself or through an
 15 attorney,” and that if he could not afford an attorney, one would be appointed to represent him. *See*
 16 *Gov’t. Ex..3 & 3A*. He was advised of the charges against him and told he did not have to make a
 17 statement and could “remain silent if he so wishes.” *See Gov’t. Ex. 4 & 4A*. Navarro-Montes
 18 voluntarily waived those rights prior to each declaration.

19 With respect to the statement made on February 11, 2009, U.S. officials did not direct or
 20 control the Mexican sting operation, which was carried out by Mexican federal agents. Participation
 21 by U.S. agents in the operation is insufficient to establish a joint venture. *Pfeifer v. United States*
Bureau of Prisons, 615 F.2d 873, 877 (9th Cir. 1980) (finding no joint venture where an armed U.S.
 23 agent was present in the room during defendant’s interrogation by Mexican officials). And by all
 24 accounts, the statement Navarro-Montes seeks to suppress was not made in response to any
 25 purported questioning or its functional equivalent by authorities from either country, but rather was
 26 spontaneously uttered during his apprehension by Agent Pozos.

27 “To decide whether a joint venture has occurred, the court must closely ‘scrutinize the
 28 attendant facts.’” *United States v. Rose*, 570 F.2d 1358, 1362 (9th Cir. 1978) (citing *Byars v. United*

1 *States*, 273 U.S. 28, 32 (1927)). Based upon the record, the Court concludes that Navarro-Montes'
2 statements were not the product of a joint venture.

CONCLUSION

4 For the foregoing reasons, Defendant Jesus Albino Navarro-Montes' motion to suppress is
5 **DENIED** as to the statements discussed herein.

6 || IT IS SO ORDERED.

7 | DATED: January 27, 2011

Michael M. - Ruello

Hon. Michael M. Anello
United States District Judge